

**Snohomish County Comments**  
**Ecology's Modifications to the Phase I NPDES Municipal Stormwater Permits**

Document	Section, Page and/or Paragraph #	Modified Language	Comment	Snohomish County Proposed Language
Phase I Permit	S5.C.5.a.i S5.C.5.a.ii S5.C.5.a.iii	<p>“No later than June 30, 2015, each Permittee shall adopt and make effective a local program that meets the requirements in S5.C.5.a.i through ii, above. The local program adopted to meet the requirements of S5.C.5.a.i through ii shall apply to all applications submitted after June 30, 2015 and shall apply to applications submitted no later than June 30, 2015, which have not started construction by June 30, 2020.”</p> <p>“The Permittee shall submit draft enforceable requirements, technical standards and manual to Ecology no later than July 1, 2014. Ecology will review and provide written response to the Permittee. ...”</p>	<p>As proposed, these requirements are impossible to perform.</p> <p>The July 1, 2014, deadline for submittal of draft regulations to Ecology came and went before Ecology published the proposed modified permit documents, which included modifications to the requirements of S5.C.5.a.i-ii (i.e., Appendix 1 and the Ecology Stormwater Management Manual for Western Washington). It is impossible for Snohomish County to have provided draft regulations to Ecology in July 2014 that reflect modifications to the Ecology Stormwater Manual, for example, that were not proposed until August 2014. Understandably, Snohomish County cannot now go back in time and comply with this new permit language as proposed by Ecology.</p> <p>Further, many substantive changes, including but not limited to those related to compost standards, underdrain restrictions, and maintenance standards, are currently proposed by Ecology. A number of these changes will affect decision and administrative processes contained in Snohomish County's draft regulations. Snohomish County needs time to review these modifications, once finalized, determine their effects on the County's equivalent regulations that were already prepared and submitted to Ecology in July 2014, and revise those regulations accordingly. There is not time to do all of this by the June 30, 2015, deadline in the Phase I permit. One obvious solution to this problem is to set a new deadline for submittal of draft regulations to Ecology, with appropriate changes in the deadline for adoption of final regulations by the permittees.</p>	<p>Revise as follows:</p> <p>“No later than June 30, 2016, each Permittee shall adopt and make effective a local program that meets the requirements in S5.C.5.a.i through ii, above. The local program adopted to meet the requirements of S5.C.5.a.i through ii shall apply to all applications submitted after June 30, 2016 and shall apply to applications submitted no later than June 30, 2016, which have not started construction by June 30, 2021.</p> <p>The Permittee shall submit draft enforceable requirements, technical standards and manual to Ecology no later than July 1, 2015. Ecology will review and provide written response to the Permittee. ...”</p>
Phase I Permit  Phase II Permit	S5.C.5.c  S5.C.4.g - .i	Watershed-scale stormwater planning requirements in their entirety	<p>Snohomish County has consistently expressed its concerns regarding a permit obligation that requires it to perform actions in and conduct analysis and planning regarding geographic areas located outside of the County's jurisdictional boundaries, where the County's MS4 does not exist. The PCHB found this concern to be valid and ordered Ecology to ensure that each jurisdiction subject to an Ecology municipal stormwater permit be obligated to fully participate in the watershed-scale planning process for the portion of the watershed within its jurisdiction. Unfortunately, there are many aspects of the modified permits that do not appear to satisfy this full participation requirement.</p> <p>The County has also consistently expressed its concerns with any permit requirements that make Snohomish County's compliance with its permit dependent on the actions of third parties over whom Snohomish County has no control. Unfortunately, there are many aspects of the modified permits that needlessly and inappropriately make Snohomish County's ability to comply with its own permit dependent on the actions of another permittee. One such example is the apparent requirement that any consultant contracts entered into by the County must also be executed by all participating entities in the Little Bear Creek watershed. Further, the requirement that participating entities provide funding to lead County entities is effectively a requirement to contract as well.</p>	

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			<p>The exchange of funds contemplated will not and cannot take place absent a contract between the permittees governing the timing of payment, the scope of work to which said payments will be applied, the basis for apportioning financial obligations, and numerous other rights and responsibilities to govern this relationship. The County cannot force other jurisdictions to contract with it. A requirement to contract is, therefore, the loss of the County's ability to control its own permit compliance. Mixing permit requirements with contractual obligations will create ambiguity, confusion, and delay and should be avoided.</p> <p>Ecology created the watershed-scale stormwater planning process and has tasked certain permittees with certain roles and responsibilities. Ecology obligated the Phase I permittees to select the watershed. This arguably set up an unfortunate dynamic with other jurisdictions within the selected watershed that did not agree with the selection. Further, Ecology directed that Phase I permittees convene and lead the process. Ecology has not altered this basic structure with these proposed modifications. Accordingly, having set these ground rules, Ecology must not draft the permits in a manner that undermines a permittee's ability to comply with its assigned responsibilities. For example, the Phase I permittees bear the burden of meeting the final plan deadline in the Phase I permit. Neither the current Phase II permit, nor the proposed modifications to the Phase II permit, subject Phase II permittees to this deadline and the resultant permit violation if it is not met. In fact, neither the current Phase II permit nor the proposed modifications to the Phase II permit address the timeliness of the required actions at all. Ecology cannot obligate Phase I jurisdictions to meet a deadline and then place outside of their control the ability to meet said deadline.</p>	
Phase I Permit	S5.C.5.c	Watershed-scale stormwater planning requirements in their entirety	The regulatory language employed by Ecology in these proposed modifications is, in many instances, confusing and unclear. Ecology's use of passive voice in setting forth the roles and responsibilities of multiple permittees subject to multiple permits in a coordinated endeavor creates needless confusion and will only lead to delay and conflict. For example, stating that data quality and quantity must be compatible with other project data without stating which entity gets to make that determination and when in the process is problematic.	
Phase II Permit	S5.C.4.g - .i			
Phase I Permit	S5.C.5.c.i Footnote 3 p. 20 (redline)	<p>"Ecology approved a selected watershed for all four County Permittees. Clark County chose the Whipple Creek watershed which was one of the options listed in the permit. King County and Pierce County chose to do planning on subsets of watersheds listed in the permit that meet the four criteria identified for alternative watersheds. King County chose a portion of the Bear Creek watershed (excluding the Cottage lake sub-watershed, Evans Creek, and the area downstream of the confluence with Evans</p>	<p>Ecology's proposed modification in noting compliance with this particular Permit requirement and not others is arbitrary and confusing. For example, as far as Snohomish County knows, each permittee submitted a scope of work and schedule by the April 1, 2014, deadline in current S5.C.5.c.ii. Yet Ecology did not propose to modify the Permit to include a footnote memorializing that aspect of Permit compliance.</p> <p>In addition, this footnote is not accurate. Snohomish County did not propose the entirety of the Little Bear Creek watershed as its alternative, but only that portion of the Little Bear Creek watershed in Snohomish County.</p> <p>As a practical matter, Ecology's decision to modify the Permit with the addition of this footnote is likely to lead to challenges to Ecology's underlying decision regarding watershed approval, a decision that was made over one year ago and upon which Phase</p>	Delete proposed footnote

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		Creek), and Pierce County chose the Spanaway Creek/Lake sub-watershed of the Clover Creek watershed. Snohomish County proposed an alternative watershed, Little Bear Creek, which meets the four qualifying criteria.”	I permittees have relied in crafting a scope of work to meet the April 1, 2014, deadline, as well as investing significant resources to date to meet the final watershed-scale stormwater plan deadline.	
Phase I Permit	S5.C.5.c.ii	“All participating entities must be included in scoping the work, identifying data needs, executing consultant contracts (if necessary), identifying watershed characteristics, constructing and calibrating the model(s).”	<p>What does it mean for participating entities to be “included” in this list of activities? Is it a Phase I permittee’s obligation to ensure that all participating entities are “included” in the listed activities? If so, how will a Phase I permittee know when it has complied with this requirement?</p> <p>What is the difference between this sentence (the first bullet in the list) and the third bullet in the list? This sentence appears to concern including participating entities in certain listed actions with no apparent standard by which to judge the appropriate level of inclusion. The third bullet concerns “adequate opportunities” (also problematic as a standard, see comment below) for participating entities to provide input and feedback generally. Employing one standard (“must be included”) in certain circumstances and another standard (“adequate opportunities ... to provide input and feedback”) in another is confusing and arbitrary.</p> <p>If Ecology desires to require Phase I permittees to do certain actions to satisfy convene and lead obligations, then Ecology needs to clearly list those required actions and those required actions must be capable of being performed by the Phase I permittee, regardless of the actions or inactions of a third party.</p>	Revise for clarity.
Phase I Permit	S5.C.5.c.ii	“All participating entities must be included in ... scoping the work....”	Modify the language as noted. Snohomish County’s proposed language makes this statement more consistent with the ruling of the PCHB, which directed that each jurisdiction participate in the watershed-scale planning process for the portion of the watershed within its jurisdiction.	“All participating entities must be included in ... scoping the work that will occur in their respective jurisdictions ...”
Phase I Permit	S5.C.5.c.ii	“All participating entities must be included in ... identifying data needs....”	This language is unclear. Does this mean the data needs for the overall project, as in, the types of data that should be considered, the quality of that data, etc. or does this mean each jurisdiction will identify the data it has and the data it believes it needs?	
Phase I Permit	S5.C.5.c.ii	“All participating entities must be included in ... executing consultant contracts (if necessary)....”	<p>As an initial matter, it is unclear whether the parenthetical “(if necessary)” refers to: (1) a determination by the Phase I permittee of whether participating entity participation in executing consultant contracts is necessary; or (2) an acknowledgement that some Phase I permittees may not utilize consultants on this project.</p> <p>Further, this language is unlawful, unreasonable, and impracticable. It should be deleted. Ecology’s proposed requirement that all participating entities must also execute consultant contracts is unlawful. With this proposed language, Ecology appears to be saying that if a Phase I permittee opts to use a consultant, then regardless of the subject matter of that consultant contract or the geographic scope of the work described therein, all participating entities must also be parties to said consultant contract. It is not appropriate for a permit to require the permittee to enter into contracts or to dictate the parties to a contract. All permit requirements should be</p>	Delete the quoted language.

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			contained in the body of the permit itself. Further, such a requirement makes the County's ability to comply with its permit obligations completely dependent on the actions of third parties, in this case, all participating entities agreeing to a consultant contract.	
Phase I Permit	S5.C.5.c.ii	"All participating entities must be included in ... identifying watershed characteristics..."	What is required by this statement is unclear. What does it mean for a participating entity to be included in identifying watershed characteristics?	
Phase I Permit	S5.C.5.c.ii	"Provide adequate opportunities for participating entities to provide input and feedback on all steps in the process that involve them."	What are adequate opportunities? Who decides this and when in the process? This "standard" provides no actual guidance to Permittees about what they need to do to comply with their Permit obligations. Nor are Permittees able to clearly determine when they have satisfied this Permit obligation. This type of language is not helpful.	Strike "adequate"
Phase I Permit	S5.C.5.c.ii	"Develop and coordinate a timeline for the planning effort."	Because Snohomish County is ultimately responsible for the completion of the final Little Bear Creek watershed-scale planning project by the deadline in the Phase I Permit, Snohomish County objects to the need to coordinate a timeline with the participating entities. While the County appreciates the spirit of this language, the participating entities will not be in violation of their Permit if the proposed 2017 deadline (or the current 2016 deadline) is not met. That burden falls fully upon the Phase I permittees. Accordingly, Phase I permittees must be fully empowered to establish a project timeline that Phase I permittees believe will ensure compliance with Phase I permit deadlines.	Revise to read as follows: "Develop a timeline for the planning effort."
Phase I Permit	S5.C.5.c.ii	"Failure to <i>convene and lead</i> this process in a manner that is inclusive of the participating entities is a permit violation."	This sentence states that if a Phase I permittee is not "inclusive" of participating entities, it is a permit violation. What does "inclusive" mean in this context? How is a Phase I permittee supposed to know if it has provided the requisite level of "inclusiveness" to satisfy this requirement? If Ecology simply means that failure to comply with the requirements proposed in S5.C.5.c.ii is a permit violation, Ecology should just state that. Even that is not necessary, however. It is understood that if a permittee does not satisfy a permit requirement, that is a permit violation. Accordingly, this sentence is unnecessary, unreasonable, and vague and should be deleted.	Delete this sentence
Phase I Permit	S5.C.5.c.ii	"However, it is not a permit violation if other entities, whose actions the Permittee has no or limited control over, <i>refuse to participate</i> ."	It is unclear why Ecology does not use the newly defined phrase "participating entities," consistent with the rest of proposed S5.C.5.c.ii. By using "other entities" as opposed to "participating entities," ambiguity is introduced as to who these "other entities" are. Although the Statement of Basis at 15 appears to try to make clear that "other entities" includes "participating entities," it does so in a way that ultimately serves only to introduce additional ambiguity. The Statement of Basis notes that refusal to participate by another permittee will not be construed as a permit violation by a county "that genuinely attempts to lead the process." How would Ecology evaluate "genuineness?"  It is unreasonable for Snohomish County's compliance with its Phase I permit to depend on the actions of a third party. As set forth in this sentence, the only way in which a Phase I permittee will not be considered in violation of its Permit related to the actions or inactions of another entity, is if that other entity "refuses to participate." This is too limited and is likely to lead to disputes over whether a particular action by a	Revise to make clear that a Phase I permittee is not responsible for, and will not be considered in violation of its permit for, the actions or inactions of participating entities in this watershed-scale planning process.

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			participating entity constitutes “refusing to participate” or something else. Short of refusal, there are any number of things a participating entity can do to slow, complicate, and undermine a process that the participating entity does not wish to move forward.	
Phase I Permit	S5.C.5.c.ii, p. 21 (redline)	“County permittees shall invite participation from cities, counties, and other governmental entities which are not subject to a Washington State municipal stormwater permit and which have areas of their jurisdiction in the selected watershed.”	The quoted, proposed language is unreasonably vague, impracticable, and should be deleted. The quoted language could be interpreted as to be so broad as to include all special purpose districts, state agencies, and federal agencies without regard to their relevance in the stormwater planning process or even stormwater management in general. This places an unreasonable burden on the lead Phase I permittee and creates an unnecessary risk of permit violation if a Phase I permittee were to overlook inadvertently a particular governmental entity.	Strike this sentence.
Phase I Permit	S5.C.5.c.iv, p. 24 (redline)	“Each County Permittee shall submit a final watershed-scale stormwater plan to Ecology no later than September 1, 2017.”	The deadline of September 1, 2017, is largely unrealistic under current permit requirements. The additional coordination requirements Ecology proposes will significantly extend the amount of time needed to complete this process.  Ecology may want to consider making the final deadline applicable only to completion of the calibrated model, rather than the implementation plan, and directing completion of the implementation plan during the next permit cycle.	Modify the final deadline to December 31, 2017.
Phase I Permit	S5.C.5.c.v	“Each Permittee that has all or part of its coverage area under this Permit in a watershed selected by a Phase I county for watershed-scale stormwater planning under conditions S5.C.5.c.i-iv of this Permit shall participate in the watershed-scale stormwater planning process led by the Phase I county. The permittee shall:...”	The Phase I and Phase II permits are inconsistent in their presentation of participating entity obligations. The Phase II permit introduces the list of obligations as follows: “As needed and as appropriate, the permittee shall: ...” In contrast, the proposed Phase I permit introduces the list of obligations as follows: “The permittee shall: ...”  This inconsistency is problematic for a couple of reasons. First, Snohomish County, as a participating entity in King County’s Bear Creek planning effort, is arguably held to a different standard of participation than Phase II participating entities in the Bear Creek effort. While the Phase II jurisdictions must only do those actions “as needed and as appropriate” Snohomish County shall be required to do those actions regardless of whether or not they are needed or appropriate. Second, who decides when an action is needed and appropriate is not stated, nor is there any further explanation of such a standard. This seems likely to create problems as leading and participating entities dispute when something is needed and appropriate and when it is not.  Both permits should employ consistent language when consistent obligations are intended.	Delete “As needed and as appropriate” in the Phase II permit.
Phase II Permit	S5.C.4.g	“Each Permittee that has all or part of its coverage area under this Permit in a watershed selected by a Phase I county for watershed-scale stormwater planning under condition S5.C.5.c of the <i>Phase I Municipal Stormwater General Permit</i> shall participate with the watershed-scale stormwater planning process let by the Phase I county. As needed and as appropriate, the permittee shall:...”		
Phase I Permit	S5.C.5.c.v(9)	“Select stormwater management strategies and conduct an evaluation of the effectiveness of those strategies .... This could require multiple model runs.”	Ecology’s proposed comment on multiple model runs is unnecessary.	Delete the following sentence: “This could require multiple model runs.”

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Phase I Permit	S5.C.5.c.v(10)	“The strategies and schedules for each permittee must be part of an integrated watershed-wide implementation plan.”	As regulatory language, the purpose of this sentence is unclear. Is it intended to direct the Phase I participating entity, Snohomish County, to submit the implementation plan and schedules it develops to the lead Phase I permittee, King County? If so, the language should be modified to clearly state that requirement.	Revise for clarity
Phase I Permit	S5.C.5.c.v(11)	“Provide a pro rata share of a public review and comment process on the draft watershed-scale stormwater plan.”	This language is unclear. Consider revising for clarity.	“Provide a pro rata share of the total costs of a public review and comment process on the draft watershed-scale stormwater plan.”
Phase I Permit  Phase II Permit  Statement of Basis	S5.C.5.c.v(1) – (11)  S5.C.4.g.1 – xi  p. 17	“The list of watershed-scale planning activities, above, to which Phase II permittees (and Phase I permittees, where they are participating in but not leading a process) must contribute is intended both to obligate full participation by all entities, and to prevent Phase I counties from requiring participation in planning activities that are not required by the permit.”	Ecology appears to misapprehend the role of Phase I permittees in this watershed-scale planning process. Phase I permittees are not requiring Phase II permittees to conduct watershed-scale stormwater planning. Ecology is the responsible regulatory authority and should be setting forth clear requirements for this process in the appropriate permits. Further, Phase I permittees have no interest in “requiring participation in planning activities that are not required by the permit.” Accordingly, there is no need for Ecology to suggest it needs to “prevent” them from doing that. The watershed-scale planning process is a creation of Ecology. Phase I permittees are interested in complying with their Phase I permit obligations.	
Phase I Permit	S5.C.5.c.vii	“When a participating entity in the planning process is obligated to fund a portion of the work described above, or elects to fund a task rather than performing the task itself, their financial obligations will be apportioned in accordance to the <i>percentage land area</i> over which the permittee has jurisdiction within the planning area. ...”	A better cost basis is impervious area, which has a direct relation to stormwater runoff and pollution. An impervious area basis fairly distributes the costs in proportion to contribution to stormwater runoff and stormwater pollution. The percentage land area basis has no relation to the nature of stormwater runoff or pollution. The percentage land area basis treats less developed areas of watersheds as if they were the same as more densely developed urban areas. Instead, the costs for basin planning should recognize and be proportional to the impacts that necessitate basin planning, which points to an impervious area basis.	Revise to reflect total impervious area as the standard for cost apportionment.
Phase I Permit	S5.C.5.c.vii	“When a participating entity in the planning process is obligated to fund a portion of the work described above, or elects to fund a task rather than performing the task itself, their financial obligations will be apportioned in accordance to the <i>percentage land area</i> over which the permittee has jurisdiction within the planning area. Permittees within a watershed may agree in writing to an alternate scheme of distributing financial	The scope and applicability of this subsection may be unclear.	

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		obligations.”		
Phase I Permit Phase II Permit	S5.C.5.c.vii S5.C.4.i	“Permittees within a watershed may agree in writing to an alternate scheme of distributing financial obligations.”	This language is unclear. Is it Ecology’s intention that all participating entities and the County permittee must be party to a single alternate scheme agreement? There is no reason to limit the ability of the permittees to craft alternate schemes to calculate financial obligations as they deem appropriate. By imposing this apparent limitation, Ecology gives veto power to a single participating entity even when all other permittees may be in agreement on an alternate scheme to be applied only amongst themselves.	“Each participating entity in a watershed may agree in writing with the County Permittee to an alternate scheme of calculating financial obligations. The same alternate scheme need not be employed as to every participating entity.”
Phase I Permit	Appendix 1, Section 1, page 1	“The following pavement maintenance practices are not categorically exempt. <del>They are considered redevelopment.</del> ”	The three pavement activities are within the road prism/footprint and all three should be considered redevelopment.	Revise as follows:  “The following pavement maintenance practices are not categorically exempt. They are considered redevelopment.”
Phase I Permit	Definitions and Acronyms at 70 (“conveyance system”), 71 (“discharge point”), 74 (“outfall” and “receiving waters”) (redline)		Snohomish County recommends incorporation of the document titled “Municipal Stormwater Permits – Revised definitions explained” into the official Fact Sheet for the modified permit.	